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No. 83-1235

In the Supreme Court of the United States

OCTOBER TERM, 1983

JUNE OIL AND GAS, INC., ET AL., PETITIONERS

v.

WILLIAM P. CLARK,
SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners June Oil and Gas, Inc. and Cook Oil and Gas, Inc. each filed drawing entry cards for oil and gas leases on two parcels of land in Colorado. June Oil received first priority on parcel CO-337 and second priority on parcel CO-361. Cook Oil received no priority on parcel CO-337, but received first priority on parcel CO-361. Upon learning of the substantial interrelationship between petitioners, the government rejected their offers pursuant to 43 C.F.R. 3112.5-2 (1978), which prohibits multiple filings by related entities. (The regulation is set out in full at Pet. 5-6.) In this Court, petitioners contend that the Department of the Interior's Board of Land Appeals (IBLA), the district court, and the court of appeals all erred in holding that petitioners violated the prohibition against multiple filings.

1. June and Michael Cook were married in 1955. They executed a prenuptial agreement that provides for the separation of their respective assets. Pet. App. A3. June Oil and Cook Oil are Colorado corporations. June Cook owns 100% of the stock of June Oil, and Michael Cook owns 100% of the stock of Cook Oil. June Cook is the President/Director of Cook Oil, and Michael Cook is the President/Director of June Oil. Adrianna van der Stok serves as Secretary/Treasurer of both corporations. The corporations have the same address and share business facilities and personnel. Pet. App. A23-A24.

2. a. On August 31, 1978, the Bureau of Land Management, after review of the qualifications file for each corporation, concluded that the corporations were interrelated and, therefore, that each had secured an unfair advantage in the drawings by submitting concurrent offers on the same parcels. Accordingly, BLM rejected the priority offers, citing the multiple filing prohibition contained in 43 C.F.R. 3112.5-2 (1978).

b. Petitioners appealed to the IBLA, which upheld the decision of the BLM (Pet. App. A21-A29). The IBLA concluded that June Oil and Cook Oil were sufficiently interrelated to make their participation in the same oil and gas lease drawings inherently unfair. The IBLA also concluded that the common officers of the corporations breached their fiduciary duty to the corporations when both corporations filed lease offers on the same parcels. The underlying facts, as found by the IBLA, included the following: (1) officers of each corporation had authority to file offers and execute leases on behalf of the other corporation (*id.* at A25), and (2) the corporations had virtually identical articles of incorporation, the same business address, and shared business facilities and personnel (*id.* at A23-A24).

c. The United States District Court for the District of Colorado affirmed the IBLA's decision, holding that it was not arbitrary, capricious, abusive of discretion or otherwise not in accordance with law (Pet. App. A19).[1] The court stated that "the agency has carried out its duty of protecting other offerors from being put to an unfair advantage and providing each with an equal opportunity of obtaining an interest in the leases" (*id.* at A20). The court of appeals affirmed (*id.* at A1-A7), expressly relying on the IBLA's conclusion that June and Michael Cook breached their fiduciary duties as corporate officers (*id.* at A7).

3. The decision below is correct and does not conflict with any decision of this Court or any other court of appeals. Moreover, petitioners' contrary argument notwithstanding (Pet. 12-13), the decision below, which turns entirely on the peculiar factual interrelationship between the two petitioner corporations, is not of such general importance as to warrant review by this Court.

a. Petitioners assert (Pet. 10) that the IBLA's reliance on *Schermerhorn Oil Corp.*, 72 Interior Dec. 486 (1965), was misplaced because that case involved a situation in which one company owned stock in another company filing in the same oil and gas lease drawing; thus, the company that owned stock in the other would benefit if either company drew a priority on the lease. Here, however, neither June Oil nor Cook Oil owned a beneficial interest in the other. The IBLA agreed in part (Pet. App. A24) with petitioners' claim that *Schermerhorn* is distinguishable because the two

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[1]The district court's decision was rendered in a consolidated opinion together with *Grynberg* v. *Andrus*, 506 F. Supp. 1204 (D. Colo. 1981), aff'd, 717 F.2d 1316 (10th Cir. 1983), petition for cert. pending, No. 83-1236. Because the court of appeals rendered separate decisions, we are submitting separate responses to the petitions.

corporations here are independently owned. But the IBLA found other circumstances that demonstrated the relevance of *Schermerhorn* to this case. The IBLA noted (Pet. App. A25) that rejection of the lease offer in *Schermerhorn* was also required because all the officers of Schermerhorn with authority to execute offers and leases were also officers of a second corporation with respect to which they held the same authority. The IBLA found, on the facts previously described, that the instant case involved a similar situation — here, too, the officers and directors of June Oil and Cook Oil had authority to file lease offers for the same land on behalf of both corporations (Pet. App. A23). Thus, the IBLA and the courts below did not err in their reliance on *Schermerhorn*.

b. Petitioners claim (Pet. 10-11) that the IBLA, the district court, and the court of appeals incorrectly determined that a breach of fiduciary duty occurred. As petitioners correctly note (Pet. 10), a breach of fiduciary duty in this context is normally found when a corporate officer or director individually files a lease offer in competition with the corporation. But a breach likewise occurs, as the IBLA explained (Pet. App. A26), when a business opportunity (filing for an oil and gas lease) arises that is equally appropriate for either corporation and the directors take the opportunity for both corporations. A breach occurs with respect to each corporation because the second filing lessens the chance of success of the first offer as between two competing offerors. And where, as here, both corporations win a priority on the same parcel (Pet. App. A4), the conflict of interest created in (and by) petitioners' common officers and directors becomes still more palpable. In such circumstances, the interest of the holder of the second priority lies in seeking the disqualification of the top priority offeror, thereby precluding the corporate fiduciaries from faithfully discharging their obligations to both corporations.

c. Finally, petitioners correctly contend (Pet. 12) that the Department of the Interior has never promulgated a rule that specifically prohibits companies with common board members from filing lease offers on the same parcels of land. But their assertion (*ibid.*) that the agency's decision here represents a significant departure from previous interpretations of 43 C.F.R. 3112.5-2 (1978) is both unsupported and mistaken.[2]

The fact that the agency never promulgated a general rule specifically prohibiting companies with common board members from filing lease offers on the same parcels of land is of no consequence. The prohibition against multiple filings, 43 C.F.R. 3112.5-2 (1978), is intended to assure every entrant in a drawing an equal chance of success.[3] Here, the petitioner corporations not only shared common officers and directors, but those persons could file oil and gas lease offers on behalf of both corporations (Pet. App. A23, A25). Moreover, the IBLA found (*id.* at A27) that petitioners are

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[2]Petitioners also mistakenly claim (Pet. 12) that they were denied vested property rights by the decision to reject their offers. It is well-established, however, that the mere filing of an offer to lease confers no vested property rights in the applicant. *Arnold* v. *Morton*, 529 F.2d 1101, 1106 (9th Cir. 1976), (citing *Haley* v. *Seaton*, 281 F.2d 620 (D.C. Cir. 1960)); *Burglin* v. *Morton*, 527 F.2d 486, 488 (9th Cir. 1976); *McTiernan* v. *Franklin*, 508 F.2d 885 (10th Cir. 1975); *Hannifin* v. *Morton*, 444 F.2d 200, 203 (10th Cir. 1971). A lease application constitutes "a hope, or perhaps expectation, rather than a claim." *Schraier* v. *Hickel*, 419 F.2d 663, 666 (D.C. Cir. 1969).

[3]The multiple filing regulation has been given broad application and interpretation by the Department of the Interior in order to ensure an equal chance for every applicant who files a lease offer in a drawing. See, *e.g.*, *Farrell L. Lines*, 40 I.B.L.A. 91 (1979); *William R. Boehm*, 36 I.B.L.A. 346 (1978); *Punta Corp.*, 27 I.B.L.A. 220 (1976); *Richard Donnelly*, 11 I.B.L.A. 170 (1973).

"so interrelated by virtue of their common director/officers," as well as other factors, "that it is difficult to define where the interests of each of the corporations begin and where they end."

On these facts, the agency clearly did not exceed its broad authority to interpret its multiple filing regulation. The agency's interpretation of its own regulation is entitled to great deference. *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971); *Udall* v. *Tallman*, 380 U.S. 1 (1965). Nor does the agency's decision in this case represent any departure from previous interpretations of the multiple filing prohibition. That this is true is evidenced by petitioners' failure to mention any such previous interpretations save *Schermerhorn*, which we have demonstrated clearly supports the decision below.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4]There are, however, several other decisions that support the agency's interpretation here. See *Graybill Terminals Co.*, 33 I.B.L.A. 243 (1978); *William R. Boehm*, 34 I.B.L.A. 216 (1978); *Rupert Hickman*, 36 I.B.L.A. 353 (1978); *Panra Corp.*, 27 I.B.L.A. 220 (1976). As demonstrated by these decisions, it is the finding of an interrelationship between the lease applicants that is critical. On the facts here, petitioners are plainly interrelated.